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WHOLE WOMAN'S HEALTH; AUSTIN WOMEN'S HEALTH CENTER; KILLEEN WOMEN'S HEALTH CENTER; NOVA HEALTH SYSTEMS D/B/A REPRODUCTIVE SERVICES; SHERWOOD C. LYNN, JR., M.D.; PAMELA J. RICHTER, D.O.; AND LENDOL L. DAVIS, M.D., ON BEHALF OF THEMSELVES AND THEIR PATIENTS,

Petitioners,

v.

KIRK COLE, M.D., COMMISSIONER OF THE TEXAS DEPARTMENT OF STATE HEALTH SERVICES; AND MARI ROBINSON, EXECUTIVE DIRECTOR OF THE TEXAS MEDICAL BOARD, IN THEIR OFFICIAL CAPACITIES,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF OF *AMICI CURIAE* KATE BANFIELD, JO BAXTER, AMY BRENNEMAN, ELIZABETH DRIEHAUS, ANNE FOWLER, CAROL MCCLEARY, SUZANNE POPPEMA, SHEILA SCHROEDER, LENI SILVERSTEIN AND JENNIFER STEFFEN IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICI CURIAE*

Amici curiae are women who chose to have an abortion. They believe the deeply personal stories they share in this brief are representative of countless women in this country.[1]

It is estimated that thirty percent of American women have had or will have an abortion. Because of the continuing, sometimes violent debate over abortion, many bear the stories of their abortions in silence. These women are our loved ones, our mothers, our daughters, our co-workers, our neighbors and our friends from all walks of life. They are proud Americans and members of our communities whose liberty the Constitution protects. But the right of women to choose to have an abortion is threatened by the Fifth Circuit's decision below.

Amici have never regretted their decisions to have an abortion. To the contrary, they strongly believe that the right to access an abortion was and is crucial to their and every woman's ability to define her own existence, determine her future, achieve her dreams and aspirations, and be an equal participant in our society. It is a key component of the constitutional right to liberty, and central to a woman's

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[1] The parties gave written consent to file this brief. No party or party's counsel authored this brief in whole or in part or made a monetary contribution to fund its preparation or submission. No one other than *Amici* and their counsel made a monetary contribution to its preparation or submission.

autonomy, dignity, and decisions concerning her family. *Amici*'s exercise of this fundamental liberty has enabled them to live fulfilling lives. It has allowed those *amici* who wished to have children to do so when they were able to provide a safe and supportive home.

Amici submit this brief in support of Petitioners, in support of reversing the decision of the Fifth Circuit and in support of every woman's right to choose an abortion without undue burden on her ability to safely effectuate her choice. This Court should stri[1] e down the challenged portions of Texas House Bill 2, 83rd Leg., 2nd Called Sess. (Tex. 2013) ("HB2"), which would force more than seventy-five percent of the State's abortion clinics to close due to restrictions that are unnecessary to the claimed purpose of safeguarding women's health.

SUMMARY OF ARGUMENT

Access to abortion enables women to make choices central to their personal dignity and autonomy and to define their own concept of existence.

Point I addresses the historical context of this Court's recognition of the right of access to abortion as a fundamental liberty protected by the Constitution. The Court has explained that women must be able to participate equally in the social and economic life of this nation. It has rejected historical generalizations about "typically female 'tendencies'" or the

"inherent" nature of women as a basis for "constraints on an individual's opportunity." *United States v. Virginia*, 518 U.S. 515, 533, 541 (1996) (rejecting "expert" opinions and explaining that since 1971 "we have cautioned reviewing courts to take a 'hard look' at generalizations or 'tendencies'" supposedly common to women).

Point II presents *amici*'s own stories, including their profound relief and gratitude for their ability to terminate a pregnancy that they did not wish to carry to term, their appreciation that access to abortion was available and their lack of regret about the choices they made. *Amici* are successful professionals and educators; conscientious, moral and caring people; and valued members of communities large and small which have benefitted from *amici*'s fulfillment of their aspirations. *Amici* have deeply valued their ability to choose to pursue their education, their life's work, their life partner, and whether and when they were ready to have children, rather than have those choices determined by a chance failure or lapse of contraception, or lack of knowledge about birth control.

Point III highlights recent scientific research that demonstrates that, like *amici*, the overwhelming majority of women who have abortions believe it was the right choice for them.

ARGUMENT

I. THE RIGHT TO REASONABLE ACCESS TO ABORTION IS A FUNDAMENTAL LIBERTY PROTECTED BY THE CONSTITUTION

The criminal anti-abortion laws invalidated by *Roe v. Wade*, 410 U.S. 113 (1973), did not exist when this nation was founded and the Fifth Amendment was enacted.[2] Abortion prior to quickening – the first perception of fetal movement, typically during the fourth month of pregnancy – was legal at common law.[3] Abortion was effected by doctors, healers, midwives, and herbs.[4]

The universal recognition of the legality of abortion during those first months of pregnancy was consistent with the centuries-old, canon law view that the embryo or fetus did not become infused with a soul until quickening.[5] The common law and canon law also reflected the prevailing public opinion through the 1870s that "before a pregnant woman

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[2] *See Roe*, 410 U.S. at 129, 133-36, 138, 140-41; James C. Mohr, *Abortion in America* 3-4, 6, 16 (1978).

[3] *See Roe*, 410 U.S. at 129, 133-36, 138, 140-41; Mohr, *supra* note 2, at 3-4, 6, 16. "[A]t common law, no indictment [would] lie, for attempts to procure abortion with the consent of the mother, until she is quick with child." *Massachusetts v. Parker*, 50 Mass. (9 Met.) 263, 265-66 (1845).

[4] *See* Mohr, *supra* note 2, at 6-16.

[5] *See Roe*, 410 U.S. at 132-34 & n.22; Frank K. Flinn, *Encyclopedia of Catholicism* 4 (2007); Mohr, *supra* note 2, at 4.

'quickens,' *i.e.*, before the fourth month of pregnancy, there is no real life in the foetus, or at least that it is not a 'living soul.'"[6]

The first American statute criminalizing abortion was enacted in Connecticut in 1821.[7] It criminalized abortion only after quickening.[8] By 1840, a handful of States had passed statutes punishing any person who administered to a woman a substance or procedure with the intention of terminating a pregnancy. But the statutes were rarely enforced, especially before quickening.[9] The large majority of States either did not have anti-abortion statutes, or enacted statutes that expressly allowed abortion before quickening.[10]

It was not until after the Civil War that anti-abortion legislation finally "replace[d] the common law." *Roe*, 410 U.S. at 139. That effort received a

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[6] Homer O. Hitchcock, *Report on Criminal Abortion*, *in Fourth Annual Report of the Secretary of the State Board of Health of the State of Michigan* 55, 60-61 (1876); *see also* Mohr, *supra* note 2, at 73 ("To document fully the pervasiveness of the quickening doctrine in the United States through the 1870s would take scores, if not hundreds, of pages of references. It was simply a fact of American life.").

[7] *See* Conn. Stat. tit. 20, § 14 (1821); *Roe*, 410 U.S. at 138; Mohr, *supra* note 2, at 21.

[8] *See* Conn. Stat. tit. 20, § 14 (1821); *Roe*, 410 U.S. at 138; Mohr, *supra* note 2, at 21.

[9] *See* Mohr, *supra* note 2, at 41-43.

[10] *See id.* at 43.

"major boost" from the campaign to limit obscenity.[11] The first federal statute on the subject, the Comstock Law, was enacted in 1873. It targeted contraception, pornography, and abortion under the general umbrella of limiting "obscenity."[12]

Proponents of restrictions on abortion asserted that women exhibited "dense ignorance" about abortion.[13] The anti-abortion advocates contended that they alone should decide when abortion was necessary

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[11] Mohr, *supra* note 2, at 196. The prominent abortion opponent Horatio Robinson Storer condemned both contraception and abortion. He argued that sex for "gratification" rather than "the holiest duty of [the female] sex to bring forth living children" constituted "sinful lust" and turned marriage into "prostitution." Horatio Robinson Storer, *Why Not? A Book for Every Woman*, viii, 14, 80-81, 83 (1868) (internal quotation marks omitted). Dr. Storer argued these concerns were "invested with unusual interest" "at the close of a long and closely contested war" that required "fruitfulness" to "fill the gaps in our population." *Id.* at 84-85.

[12] An Act for the Suppression of Trade in, and Circulation of, Obscene Literature and Articles of Immoral Use, ch. 258, 17 Stat. 598 (1873).

[13] Joseph Taber Johnson, *Abortion and Its Effects*, 92-93 Transactions of the Medical and Chirurgical Faculty of the State of Maryland 159, 166 (1890); *see also* Hugh L. Hodge, *Foeticide, or Criminal Abortion; A Lecture Introductory to the Course on Obstetrics, and Diseases of Women and Children* 21, 25, 26, 30, 38, 40 (1869) (arguing that the "Church of Rome," Blackstone and English common law, the "usual impression" of the public, "innumerable legislators," and "medical men" are wrong to tolerate abortion before quickening, and that the "deluded women" who destroy the fruit "for which marriage was instituted" are influenced to do so by "mental disorders" which escalate after abortion).

because a woman's nature works "in accordance with certain simple and general laws, any infringement of which must necessarily cause derangement."[14]

Criticizing women who "ch[o]se to think for themselves" and believed themselves capable of evaluating "the morality of the subject,"[15] proponents of the restrictions argued that they had an obligation "to protect [women] from themselves."[16] It was asserted that the price of "unwarrantably interfering with nature" would be a "mental disturbance," an "utter[ ] overthrowing [of] her reason," and even an emotional reaction resulting in the death of the woman.[17] This was said to be the unavoidable consequence of the "fact" that "the wife has the moral and legal right to

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[14] Storer, *supra* note 11, at 37.

[15] D. Humphreys Storer, *Two Frequent Cases of Uterine Disease*, 6 J. Gynaecological Soc'y Boston 194, 198 (1872); *see also id.* at 197-203 (castigating the woman who aborts because she wishes to be "free" and "unshackled," and believes herself "born for higher and nobler purposes than the propagation of her species," as she thereby "unsex[es] herself" and ignores that her "well-being depends upon a proper observance of certain natural laws"; for these reasons "disease" and a "deep, heart-felt depression" "must" result after an abortion).

[16] G. Maxwell Christine, *The Medical Profession vs. Criminal Abortion, in Transactions of The Twenty-Fifth Session of the Homeopathic Medical Society of the State of Pennsylvania* 69, 70-71 (1890). Women were said to have a unique "intellectual character" prone to mental instability during pregnancy. Hodge, *supra* note 13, at 13-14, 40, 43; *accord* Storer, *supra* note 11, at 74-75.

[17] Storer, *supra* note 11, at 43-44, 48-49, 56-57, 74-76.

become a mother as often as possible,"[18] "the end for which [women] are physiologically constituted and for which they are destined by nature."[19]

These presumptions about how women think, make decisions and should conduct their lives were made by certain men. Women did not vote until 1920. Women were not doctors. Women were not legislators, nor judges, nor lawyers. The voices of women who sought to control their reproductive lives were not heeded.[20]

In 1973, this Court's landmark decision in *Roe v. Wade* rejected persistent stereotypes and recognized that "maternity, or additional offspring, may force upon the woman a distressful life and future," and "[t]here is also the distress, for all concerned, associated with the unwanted child, and there is the problem of bringing a child into a family already unable, psychologically and otherwise, to care for it." *Roe*, 410 U.S. at 153. *Roe*'s core holding rests on firmly planted precedent respecting "bodily integrity" and "liberty in

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[18] Edwin M. Hale, *The Great Crime of the Nineteenth Century* 16 (1867); *see also id.* at 9 (blaming abortion on the "education of women," which "fritted" women's time away on "music, French, higher mathematics, *et cetera*" rather than focusing women on "the rearing of children" and "the gravest duties of her position").

[19] Storer, *supra* note 11, at 75-76.

[20] *See United States v. Virginia*, 518 U.S. at 531-34 (cataloguing our Nation's "long and unfortunate history of sex discrimination" (quoting *Frontiero v. Richardson*, 411 U.S. 677, 684 (1973))).

defining the capacity of women to act in society, and to make reproductive decisions." *Planned Parenthood of S.E. Pa. v. Casey*, 505 U.S. 833, 857, 860 (opinion of the Court) (1992).

As this Court later explained in *Casey*, the right to choose whether to continue a pregnancy to term is perhaps *sui generis*, *id.* at 857:

> That is because the liberty of the woman is at stake in a sense unique to the human condition and so unique to the law. The mother who carries a child to full term is subject to anxieties, to physical constraints, to pain that only she must bear. That these sacrifices have from the beginning of the human race been endured by woman with a pride that ennobles her in the eyes of others and gives the infant a bond of love cannot alone be grounds for the State to insist that she make the sacrifice. Her suffering is too intimate and personal for the State to insist, without more, upon its own vision of the woman's role, however dominant that vision has been in the course of our history and our culture.

Id. at 852.

This Court has recognized that neither the Justices of the Court, nor theologians, nor Americans as a whole agree on the spiritual implications of

abortion, or when life begins.[21] In these circumstances, to rely on one's conscience in deciding whether to have an abortion is the burden and prerogative of human dignity. *Id.* at 850-51. "The destiny of the woman must be shaped to a large extent on her own conception of her spiritual imperatives and her place in society," not by suppositions about her role or her temperament. *Id.* at 852. The "Constitution places limits on a State's right to interfere with a person's most basic decisions about family and parenthood." *Id.* at 849.

This "most intimate and personal [of] choices a person may make in a lifetime" is at the "heart of liberty" protected by the Fourteenth Amendment. *Id.* at 851. Indeed:

> For [more than four] decades of economic and social developments, people have organized intimate relationships and made choices that define their views of themselves and their places in society, in reliance on the availability of abortion in the event that contraception should fail. The ability of women to participate equally in the economic and social life of the Nation has been facilitated by

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[21] Even the declaration on abortion ratified by Pope Paul VI does not express certainty about when the soul is infused. *See* Sacred Congregation for the Doctrine of the Faith, *Declaration on Procured Abortion* ¶ 13 n.19 (1974) (not resolving "the question of the moment when the spiritual soul is infused" because "[t]here is not a unanimous tradition on this point and authors are as yet in disagreement").

> their ability to control their reproductive lives.

Id. at 856.

Since *Casey*, this Court has repeatedly recognized that an individual's right to "shap[e] [her] destiny" is rooted in tradition and encompasses the right to personal choice regarding reproduction, marriage, and the safeguarding and stability of existing and future children, families, and relationships. *United States v. Windsor*, 133 S. Ct. 2675, 2692 (2013) (internal quotation marks omitted); *accord Obergefell v. Hodges*, 135 S. Ct. 2584, 2599-600 (2015). Such personal choices are "central to individual dignity and autonomy." *Obergefell*, 135 S. Ct. at 2597. They are connected to liberty and equality "in a profound way." *Id.* at 2602-04 (quoted material at 2603). Dignity is a thread that binds these principles. Protecting women's dignity to make these choices "vindicate[es] precepts of liberty and equality." *Id.* at 2603-04.

The factual and legal predicates for these rights are no less urgent today than they were in 1973 when *Roe* was decided, and throughout the period from 1973 to the present, when this Court has reiterated and drawn upon them. A woman should not be deprived of her right to control her reproductive life, shape her destiny and make the most intimate and personal choice of whether to carry a pregnancy to term. Her ability to access abortion must not be unduly burdened by State law.

II. REASONABLE ACCESS TO ABORTION IS ESSENTIAL FOR WOMEN TO BE EQUAL PARTICIPANTS IN SOCIETY

Amici are grateful that they were able to access an abortion. They have come forward so that women who choose abortion are not strangers to the Court.

A. Kate Banfield

Kate Banfield – wife, mother of three, and childhood education specialist – was a 19-year-old freshman in the class of 1990 at Stanford University when she accidentally became pregnant in the spring of 1987. Raised in Dallas, Texas, Kate's first year of college was intense, as she juggled the challenges of coursework – exacerbated by dyslexia – with the demands of Division I rowing.

Kate returned to Dallas for the summer following her freshman year. She was living with her parents and working as a waitress when she learned she was pregnant.

Kate had always wanted to be a mother. She knew motherhood would be the most important responsibility of her life. As a teenager, she worked with children, as a mentor, camp counselor and babysitter.

But Kate also knew that if she did not terminate the pregnancy, she would not be able to continue at the university she had worked so hard to reach. She would not receive the education that was vital to her

ability to succeed. At 19, she was not psychologically or emotionally prepared to be a mother. Having not found her life partner, she knew the struggles she would face to raise a child on her own.

Planned Parenthood referred Kate to a Dallas abortion clinic. She told only a close friend. On the day of her procedure, Kate and her friend circled the clinic in an unsuccessful attempt to avoid protestors. The two young women linked arms as a male protestor yelled horrible remarks close to Kate's face. Taking a deep breath, she called out a "Power 10" in her head, a command used to drive a boat forward in a rowing race. The mantra helped her block out the man and focus on making it up the path and through the doors. Once inside the clinic, she felt her mind settle. The quiet of the place allowed her to think and reaffirm that she had made the right choice for herself. Just like the people at Planned Parenthood, those working at the clinic treated Kate with care, dignity and respect.

Kate returned to Stanford at the end of the summer for her sophomore year. During her senior year she met the love of her life, to whom she has been married for 23 years. They have three children together.

Kate used her talents working with children and her Stanford education to pursue a career supporting the education of young children. Prior to having her own children, Kate worked as a teacher, an administrator, a consultant and an advocate. She has helped

hundreds of children through her work and is rightfully proud of her professional success and the life she has created for herself and family.

Following the birth of her first child, Kate deferred her career to devote herself full-time to the care of her own children. She returned to work as an educator 11 years later.

Kate was raised Catholic. At the time she had her abortion, she was concerned that her parents would not accept her decision. She recently informed her father of her abortion for the first time, and her public participation in this brief. He said that while he may not have agreed with her decision at the time, he acknowledges that it was her decision to make and in retrospect he definitely agrees with the choice she made for herself. Kate was at the beginning of adulthood when she became pregnant. Her choice to have an abortion allowed her to define and control her destiny.

Kate has never regretted her decision to terminate her pregnancy. She is deeply committed to the belief that all women should have the same access she had to a safe and carefully administered abortion. She also believes every woman should be treated with the same care and respect she experienced as they decide for themselves what path their lives should take.

B. Jo Baxter

Jo Baxter – married, mother of two – had an abortion in 1965, when she was a junior at the University of Nebraska. She and her boyfriend did not have access to birth control.

A member of Jo's extended family had recently become pregnant out of wedlock at age 17, got married and carried the pregnancy to term. Although Jo's relative was very bright and ambitious, she had to drop out of college after one semester, never returned and was never able to obtain employment that allowed her to use her enormous talent. Jo knew she too would have to leave college if she were to raise a child. She was determined not to follow that path.

Abortion was illegal in Nebraska in 1965 unless necessary to save the life of the pregnant woman. But Jo and her boyfriend learned of a chiropractor in Kansas who performed abortions. Because her abortion would be illegal, Jo had to overcome her fear that she would be caught. She was also scared because of her lack of knowledge of the procedure. She had the abortion without analgesia or sedation, and was in agonizing pain for several hours after the procedure. But Jo felt tremendous relief after the abortion was over.

Jo later married her boyfriend. They have been married for 49 years and have two sons.

Jo graduated with a degree in journalism. She also received an MBA from the University of Miami,

and was the valedictorian of her class. She started her career as a writer for a Nebraska newspaper. In Miami, she worked in public relations for the American Heart Association. For 33 years, Jo served as the head of marketing and public relations for Baptist Health South Florida, the region's largest non-profit, faith-based health care organization. She was one of its first female corporate vice presidents. She has served as President of the Florida Society of Healthcare Public Relations and Marketing, and received its highest honor, the John Bondurant Award. Jo has also received more than 100 other national and state healthcare marketing awards. In 2010, the Miami Chapter of the Public Relations Society of America, the world's largest organization of public relations professionals, awarded her its Lifetime Achievement Award.

Jo is dedicated to her community. She serves on the board of the Melissa Institute for Violence Prevention and Treatment. For many years she also served on the board of the Open Door Health Center, a South Dade primary healthcare center that serves the uninsured.

Jo has never regretted her decision to have an abortion. Her only regret is that the lack of access in 1965 made the experience more difficult and physically painful than it should have been. Jo believes that if she had carried the pregnancy, she would not have been able to finish her education, let alone enjoy her successful career. Her ability to choose the timing of her children meant she could build a life for herself,

support and care for her family, and enjoy personal and professional success. She believes all women should have access to legal, safe abortions.

C. Amy Brenneman

Amy Brenneman is a critically acclaimed actress, writer, and producer who has been nominated for three Primetime Emmys and three Golden Globe Awards. She is married and has two children.

Amy had an abortion in 1986, when she was a 21-year-old junior at Harvard. She got pregnant by her long-term boyfriend even though they used birth control. They had no doubt that an abortion was the right choice. Amy felt great relief after it was over. She remembers turning on the television and finding a group of politicians – all men – debating whether women should have the right to an abortion. How strange, she thought, that they could speak so confidently without addressing the enormous impact of an unwanted pregnancy on a woman.

Before graduating from Harvard, Amy co-founded a not-for-profit social action organization, the Cornerstone Theater Company. It began as a traveling company, primarily working in rural communities across the United States. It includes residents in plays that celebrate the local community, and seeks to build bridges between communities and address topics of social import. Since its founding, Cornerstone has commissioned more than 50 playwrights, produced over 80 new works, trained more than 2,000

students, and worked with tens of thousands of people. Amy's social and charitable activities also include work to eliminate racism and for USAID, traveling for CARE to support its programs in mother's nutrition and health, and assistance to the CHIME Institute, a nonprofit that develops and implements programs to promote academic excellence and conscious citizenship for children with disabilities as well as children without disabilities.

In 1992, Amy started her professional acting career. She is well-known for many roles, including her portrayal of a policewoman in NYPD Blue and a juvenile court judge in Judging Amy, a popular drama she also created and produced. The latter role was partly based on the experiences of Amy's mother, a trailblazing graduate of Harvard Law School's class of 1953 – the first class to admit women – who served for many years as a superior court judge in Connecticut. Amy would watch her mother finish some court business and observe how full of dignity, grace and humor she was. Then Amy's mother would take off her robe and talk about what to make for dinner.

Amy believes her access to an abortion at a time when she was not ready for motherhood allowed her to avoid the depression that would have accompanied the derailment of her life plans. It enabled her to exercise sovereignty over her body, to make clear-eyed decisions about who would be her life partner, and to determine for herself the time when she felt ready to be a responsible and nurturing parent. Without it,

she probably would not have graduated from college or achieved her many goals.

Amy has been married for 20 years and has two children. Fourteen years of motherhood have strengthened her belief that it is essential to become a parent only when one is ready for that deeply challenging, important, and joyous responsibility. Amy is extremely grateful that she gave birth to her daughter, who has a cognitive disability, at a time when Amy was prepared emotionally and financially to bestow all of the love and support that her daughter needs and deserves.

Amy is deeply concerned that excessive abortion restrictions create grave public health concerns. She believes it would be historically regressive – akin to revoking women's suffrage – to allow restrictions on access to abortion to deprive women of this essential component of family planning. Amy is certain that most women who do not want to be pregnant will find a way to terminate the pregnancy. Those who have social support and the money to travel and pay for the procedure will obtain safe abortions. Those who are poor, or lack social support, may attempt to self-induce an abortion, possibly harming themselves, even fatally, in the process.

D. Elizabeth Driehaus

Elizabeth Driehaus never wanted to have children. The life of a wife and mother did not appeal to her. She wanted a life working in the sciences, like

her father, who loved his job as a mechanical engineer. Elizabeth was fortunate that her father encouraged her abilities in this area. But she lost his support when he became sick with Alzheimer's, finally dying from the disease when Elizabeth was 15. Elizabeth left home at 18 and earned a degree in mathematics. After working as a programmer for a few years, she entered a PhD program in computer science.

At age 31, Elizabeth discovered she was pregnant from a casual sexual encounter while traveling in Europe. She was devastated that she would have to leave graduate school and lose her dream. She knew an abortion was the right and moral choice for her.

Elizabeth has never regretted her abortion. Had she not had such access, her life would have been changed by a single night. The most meaningful relationship of her life would have been gravely jeopardized. Shortly before Elizabeth became pregnant, she had begun seeing a man who eventually became her partner. They have been together for the last 37 years, and plan to be married next year.

Living on only a meager stipend, Elizabeth would not have been able to continue her studies for a PhD in computer science, or pursue a career in the male-dominated computer world in which she has thrived. Instead, she would probably have had to move back to her family's home to seek their assistance.

After working for many years as a computer analyst, Elizabeth entered academia in 1991. Until her retirement in 2008, she was Professor of Computer

Science at Assumption College, a New England Catholic college. Elizabeth is currently a board member of a foundation that seeks to improve the built environment, including museums, art organizations and churches, and to provide economic opportunity for the working poor. She also uses her computer skills when volunteering at Planned Parenthood.

Elizabeth is grateful for the opportunities she has had, including her choice not to become a parent, and her chance to make meaningful contributions to her field, her students and others.

E. Anne Fowler

If the Reverend Anne Fowler had not had access to an abortion when she accidentally became pregnant after enrolling in Divinity School, she would never have been able to graduate, to serve as a parish rector, or to help the enormous number of people whose lives she has touched. Unable to pursue her calling or to be the mother she wanted to be for the daughter she already had, she would have been broken.

Anne graduated from Radcliffe College in 1968. By 1973, Anne was married and pursuing her PhD in English. She became pregnant. When her husband left her four-and-a-half months later, she continued the pregnancy and had a daughter. Working on her dissertation, with a flexible schedule, Anne was glad to have a child.

After completing her PhD, Anne felt a calling to a life in the priesthood. In 1979, she enrolled in the Episcopal Divinity School, a seminary in Boston with a long-time relationship with Harvard Divinity School.

In 1981, in her second year at Divinity School, Anne accidentally became pregnant. She believed her partner would not be a suitable parent; their relationship ended soon after the abortion. Already solely responsible for her daughter, Anne knew she could not complete Divinity School and pursue a career as a priest if she did not have an abortion. She has never regretted her decision and is grateful that she did not have to travel far, which would have caused her additional stress and financial hardship while she cared for her young daughter.

Anne graduated from Divinity School in 1984. She served for 21 years as a priest at St. John's Episcopal Church, an urban parish in Boston. During her tenure, the parish grew into a vibrant community. Anne oversaw three capital campaigns, which helped to renovate the church and secure the parish's finances.

Anne met her current husband while she was serving as a priest. They have been happily married for 24 years.

Anne's contributions have extended far beyond her parish. She has served for many years in the Public Conversations Project, which maintains an ongoing dialogue among anti-abortion and pro-choice

leaders in Boston. Between 1994 and 1999, Anne served on the board of Episcopal City Mission, a faith-based ministry which works with congregations and community-based organizations throughout the Massachusetts Diocese to help the urban poor. From 2008-2013, Anne was the chaplain for people seeking Holy Orders to become bishops, priests and deacons within the Massachusetts Diocese. Anne has also chaired the Religious Coalition for the Freedom to Marry, an interfaith group dedicated to securing civil marriage for same-sex couples. Between 2002 and 2007, Anne served on the board of Episcopal Divinity School. In 2013, she received its Distinguished Alumna Award. Anne has also published five chapbooks of poems.

For the last two years, after becoming semi-retired, Anne has volunteered as a chaplain at Planned Parenthood. She meets many pregnant women who are very young or struggling economically or emotionally. Many already have children and could not handle more. Their abortions are often life-saving. Anne believes there should be reproductive justice, which means equal access for all women without having to travel further than they would for other health care.

F. Carol McCleary

Dr. Carol McCleary is married, the mother of two daughters, and the Director of Neuropsychology at the Keck School of Medicine at the University of

Southern California. Without access to an abortion she could not have achieved her aspirations.

In 1975, in her junior year at Stanford University, Carol, then 20, accidentally became pregnant by her steady boyfriend. The pregnancy was a complete shock because they used birth control. Carol was about to leave to study abroad in England for two quarters and planned to go to graduate school. She could not imagine dropping out of Stanford.

Carol decided to terminate the pregnancy as soon as possible. Stanford Health Center referred her to a private physician. She remains grateful for her ability to access her abortion without undue burden.

Carol graduated from Stanford, majoring in psychology. She received a PhD from Princeton in cognitive psychology, conducted post-doctoral work at Harvard Medical School and Children's Hospital, and had an additional post-doctoral fellowship at Boston University. In addition to teaching at the Keck School of Medicine for over twenty years, Carol performs research and sees patients. She has devoted decades to treating and helping advance our knowledge of Alzheimer's disease, Parkinson's disease, stroke, epilepsy, multiple sclerosis, traumatic brain injury, and other neurological disorders.

In 1983, Carol married a law student, now a law school professor. They have two daughters.

Carol has no regrets about her decision to have an abortion. She cannot imagine having her current

career in neuropsychology, or marrying her husband and having their children together, had she been forced to have a child as an undergraduate. She is certain that if easy access to an abortion had not been available, she would have married and then divorced her then-boyfriend. Carol and her family are not the sole beneficiaries of her ability to access an abortion. Had the law impeded her access, the numerous patients she assists daily and the many students she trains would have been deprived of her intellect, her compassionate care and her professional expertise.

G. Suzanne Poppema

Dr. Suzanne Poppema – married and the mother of two sons – is a family physician, published author, and reproductive rights advocate. Raised Catholic in New Hampshire, she attended Catholic school through high school. She always dreamed of becoming a family physician.

Suzanne had an abortion in 1975, when she was a 27-year-old intern starting her medical residency in Seattle. Suzanne had just graduated from Harvard Medical School after undergraduate studies in Political Science and premedical coursework at the University of New Hampshire. She and her steady boyfriend from medical school had agreed to a break in their relationship when they were accepted by medical residency programs in different parts of the country. After arriving in Seattle, Suzanne got pregnant from a casual sexual encounter on a camping trip.

At first, Suzanne was in denial that she was pregnant. She had been taking birth control pills. She took a pregnancy test but misread it as negative. Ultimately, a medical examination confirmed she was pregnant.

Suzanne knew immediately there was no way she would carry the pregnancy to term. She was desperate to have an abortion. Suzanne was pregnant by a person she did not want to be with or to be the father of her child. She realized that if she did not have an abortion, she would probably never be able to restore her relationship with her medical school boyfriend. And she was in the middle of her medical internship and believed her career trajectory would have been derailed if she had a child. Suzanne is therefore sure that if she had not been able to access an abortion, she would have tried to self-abort. But she found a Seattle doctor who treated her kindly and performed a safe abortion.

Suzanne later married her medical school boyfriend (after informing him of her abortion). They have been very happily married for 37 years.

Suzanne's experience led her to decide to focus her practice on reproductive health. In 1988, she took over a family planning practice in northern Washington, which she ran until 2000. Suzanne was gratified to be able to assist women who wanted babies to have them, and to assist women who knew they did not want to give birth to plan to prevent pregnancy. It

was particularly meaningful to Suzanne to help women to have children only when they wanted to.

Suzanne provided abortions to her patients, even in the face of risks to her personal safety. When other abortion providers around the country were attacked, and her own photo appeared on an internet "hit list," Suzanne's family (including her then-teenage sons) and friends urged her to take security precautions. For several years she wore a bullet-proof vest on her route to and from work. She had to have a security sweep on her home and office.

Using lessons from her medical practice and personal experience, Suzanne has devoted a significant part of her career to reproductive rights advocacy. In 1994, she published *Why I am an Abortion Doctor*, a candid account of her life and work. Before the book was published, Suzanne told her parents – both staunch Catholics – about her abortion, so they would not learn about it from her book. Her parents were very supportive and understanding. They agreed she would not be where she was if she had not chosen the abortion. From 1998-2000, Suzanne served as the President of the National Abortion Fund. She later served as Board Chair of the Physicians for Reproductive Health. She is the Director of International Medical Consulting, and a retired Associate Clinical Professor in Family Medicine at the University of Washington.

Suzanne believes that every woman who has asked her to perform an abortion has had a meaningful

reason for doing so. In her view, once women have decided to have an abortion, many will do whatever is necessary to obtain the abortion, even if that means undergoing a risky illegal procedure or attempting to self-abort. Legal barriers to access are therefore particularly heart-breaking because they will not reduce the number of abortions, but only lead to unnecessary harm to women who feel forced to find methods to abort. It is hard for people who have not felt that desperation to fully appreciate it. Suzanne believes the law should not deny access to a woman who wants to terminate an unwanted pregnancy when her whole being tells her that is the right course. If a woman cannot control her reproductive system, her liberty, her dignity and her autonomy are compromised.

H. Sheila Schroeder

Sheila Schroeder has been active in leadership roles in the financial services industry for more than 25 years. She is also a wife and the mother of two teenage children.

Sheila had an abortion in 1977, when she was a 17-year-old junior at a Catholic secondary school in Indiana. Sheila became pregnant the first time she had sex with her boyfriend. Although she was aware that other girls she knew were having sex with their boyfriends, Sheila was not well informed about contraception, and did not have access to it. Her parents never spoke to her about sex or contraception.

Sheila knew she was not ready for motherhood. She had classmates who had become pregnant and were forced by their parents to carry their pregnancies to term. They left school as a result. That was not what Sheila wanted for herself. Her goal was to go to college, have a career, and become a parent when she was emotionally and financially ready and married to the life partner of her choice.

Sheila's father was very traditional. She feared the repercussions if he found out about her pregnancy or her plan to have an abortion. She and her boyfriend worked together to help her access an abortion quickly and discreetly.

Sheila graduated from high school and received her B.A. from Indiana University. In 1987, leveraging experiences from her junior year abroad in Japan, Sheila started work as an Institutional Salesperson in the Japanese equity markets based in New York. That was the beginning of a highly successful career in which Sheila was a part of the United States financial services industry's expansion into the Asian equity markets, as well as a pioneering female in the traditionally male world of Wall Street. Sheila continues to be a leader and role model for many women in the financial services industry.

Sheila also volunteers her professional services in numerous ways. She counsels women on financial literacy and helps them develop the tools to navigate their financial lives. She serves as the President of the Board of Trustees of the San Francisco Waldorf

School – the largest Waldorf school in the United States – and is leading the school's first Endowment Campaign. She also serves on the Chautauqua Institution Promise Campaign as a lead gifts volunteer. She is a parishioner and a regular volunteer at St. Ignatius Church in San Francisco.

Sheila is certain that having an abortion was the right choice for her and her future family. She has no regrets. Access to abortion allowed her to realize her full potential and achieve her personal and professional goals. Sheila prides herself on being a person with strong core values and priorities. She believes it is crucial that men and women be able to pursue their life aspirations. For women who become pregnant accidentally, this means the liberty to control their bodies, and access to the means to effectuate that choice.

In deciding whether to file this brief, Sheila spoke to several women in the business world whom she highly respects. Each knew someone who had an abortion.

She decided to step forward because of her realization that her experience is widely shared, and that a woman who has the courage to make the right decision for her life and body should not be confronted with judgment and shame. She is hopeful that in stepping forward she will help bring the realities of this issue – and the number of people it affects – out of the shadows.

I. Leni Silverstein

Leni Silverstein is a highly-regarded anthropologist who has worked in global health and development for more than four decades, helping countless people. She has consulted with governments and leading health and human rights organizations throughout the world on health, human rights, reproductive rights and gender advocacy.

Leni started on this path in the summer of 1966, when at age 22, shortly after graduating from the University of Chicago, she had an abortion. Leni was seeing a man she knew was not a long-term partner. She had been diligent about using her diaphragm, but got pregnant anyway. The choice to have an abortion was easy. Leni did not have a committed partner and was not in a position emotionally, professionally, or financially, to care for a child.

The experience, however, felt like something out of a bad mafia movie. Because her abortion would be illegal, Leni could not go to a nearby clinic. Instead, through a friend of a friend, Leni connected with an underground abortion provider in Chicago. Leni was incredibly scared. She was told she would have to meet an unidentified person in downtown Chicago. She had no idea where she would get the abortion, or who would perform it. She knew her safety and reproductive future were at risk. When she arrived at the appointed meeting place, she was blindfolded and driven to an undisclosed location. She believes it was an apartment somewhere in Chicago. Leni feels incredibly

fortunate that she survived this ordeal. From that moment, she was certain that no other woman should be placed in a similar predicament. Leni feels strongly that the government should not intrude in a woman's choice whether to have an abortion by restricting access.

Leni has never regretted her choice to have an abortion. Had she not made that choice, her life would have been completely different. She could not have continued her education. She would have had to go to work and rely on her aging parents since she is an only child. Instead, she was able to earn a PhD in anthropology. She conducted her field work in Bahia, Brazil, started the first women's rights program for the Ford Foundation Brazil, and helped launch SOS Mujer, the first women's health and reproductive rights service organization in Brazil. Leni also inaugurated and led a new model of Ashoka Brazil Program, which has been replicated in 27 international offices of the organization.

Leni worked for many years as a gender consultant for the Ford Foundation and a Senior Program Officer for the MacArthur Foundation where she nurtured adolescent reproductive health and sex education organizations in Nigeria. Most of those organizations are leading advocacy groups in Nigeria today. In 2003, she served as a technical consultant to the World Health Organization and United Nations Fund for Population Assistance on issues relating to health care for married adolescents. She has worked with USAID on healthcare and development projects

in several African countries, authoring a study on adolescent sexual and reproductive health in Nigeria and an evaluative health project for essential health services in Angola. Leni recently served as the senior advisor for Smart Ag Analytics (SAA), a start-up for sustainable agriculture investments in China, and has two grown daughters. Her new co-edited book, *Mapping Feminist Anthropology in the Twenty-First Century*, will be published in the Spring of 2016 by Rutgers University Press.

J. Jennifer Steffen

Defining one's own concept of existence involves many types of aspirations. Sometimes the most important dimension can be forming a stable family and securing meaningful intimate relationships.

In 1978, Jennifer Steffen began dating the man who is now her husband. They are happily retired with one child, a daughter born in 1984, and grandchildren. Her husband was an electrical engineer. She was an insurance adjuster, travel agent and aide for special needs children.

In 1980, Jennifer accidentally became pregnant, despite her use of birth control. At the time, she and her husband – then a boyfriend – were going through a rough patch. Neither was ready to be a parent. Jennifer believes their relationship would not have survived the birth of a child at that time.

Jennifer decided to have an abortion at a nearby facility. She has never regretted it. Jennifer believes that without access to an abortion, her strong, life-long, 34-year marriage, and the joy of raising a child at a time when she and her husband were ready to do so, would have been imperiled. Looking back, and knowing firsthand what it takes to raise a child under the best of circumstances, Jennifer is more grateful than ever that she was able to choose an abortion when she did.

III. THE SCIENTIFIC LITERATURE SHOWS THAT, LIKE *AMICI*, MOST WOMEN WHO HAVE HAD ABORTIONS BELIEVE THEY MADE THE RIGHT CHOICE

Recent scientific research shows that, like *amici*, the overwhelming majority of women who choose abortion believe they made the right decision.

A recent study of women who obtained abortions at 30 facilities across the United States found that in the week after an abortion, some women reported happiness, some reported sadness, and some reported both feelings. But 95% of the women who obtained an abortion reported that abortion was the right decision for them.[22] Even among those who expressed any

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[22] Corinne H. Rocca et al., *Women's Emotions One Week After Receiving or Being Denied an Abortion in the United States*, 45 Persp. on Sexual and Reprod. Health 122, 126-27 (2013).

regret about the abortion, 89% stated that abortion was the right decision.[23] "Experiencing complex emotions and having strong feelings after an abortion – even negative ones – does not indicate that a woman feels she made the wrong decision."[24] A 3-year longitudinal study of these women found they experienced decreasing emotions about the experience over time, and 95% continued to believe that abortion was the right decision for them.[25]

Moreover, women who wish to obtain an abortion but are unable to do so report significantly more regret and anger about their inability to obtain an abortion than women who obtain an abortion report about their abortion.[26] The women who obtain an abortion also report significantly more relief and happiness.[27]

These studies demonstrate that, like *amici*, the overwhelming majority of women who choose abortion believe it was the right choice and do not later come to believe their decision was incorrect. A woman's legal right to terminate a pregnancy she does not

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[23] *See id.* at 127.

[24] *See id.* at 130.

[25] *See* Corinne H. Rocca et al., *Decision Rightness and Emotional Responses to Abortion in the United States: A Longitudinal Study*, PLoS ONE 2, 10 (July 8, 2015), http://www.plosone.org/article/fetchObject.action?uri=info:doi/10.1371/journal.pone.0128832&representation=PDF.

[26] *See* Rocca (2013), *supra* note 22, at 129.

[27] *Id.*

wish to carry to term permits her to make the intimate and personal choice to shape her destiny and give meaning to her personal and professional life. The challenged provisions of HB2 unduly burden that right, undermine vital interests, and are unconstitutional.

CONCLUSION

For the foregoing reasons, the Court should reverse the decision of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

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